

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Trespass Citation Issued to
Billy Joe Fink

**NOTICE OF PREHEARING CONFERENCE
AND NOTICE OF HEARING**

PLEASE BE ADVISED that a prehearing conference will be held by telephone conference call on Thursday, April 3, 2008, beginning at 1:30 p.m. and continuing as long as necessary.

Participating in the prehearing conference telephone call will be Bruce H. Johnson, the undersigned Administrative Law Judge, whose office is located at 600 North Robert Street, PO Box 64620, St. Paul, Minnesota 55164-0620, and whose telephone number is (651) 361-7839, the deputy who issued the citation, Paul Burke, whose telephone number is (763) 682-7620, and the appellant herein, Billy Joe Fink, whose telephone number is (612) 532-4221. The Judge will place the call, using these telephone numbers. If yours is not a good telephone number to use at that time or if it is necessary to change the time, please contact the Judge immediately at the telephone number above, and advise the Judge of what telephone number to use or discuss the time problem.

The purpose of the prehearing conference telephone call is to determine the nature of the dispute that caused the appeal, and to determine the best way to resolve it. The telephone call is expected to last about fifteen (15) minutes, and no more than thirty (30) minutes. If the appeal cannot be resolved during the telephone call itself, then the Judge will set a time for a hearing. The Judge will also decide whether the hearing shall be held by telephone or in person.

The citation which is being appealed was issued pursuant to Minn. Stat. § 97B.002. Subdivision 3 of that statute provides that if a person requests a hearing in order to appeal a citation, the hearing shall be held pursuant to procedures set forth in section 116.072, subd. 6. That statute provides an expedited administrative hearing process, and refers to Minn. R. 1400.8510 to 1400.8612. These are the rules which will govern the conduct of this appeal. Copies of the above-referenced statutes and rules may be obtained from Minnesota's Bookstore, 660 Olive Street, St. Paul, Minnesota 55155, telephone: 651-297-3000. Statutes and rules may also be found at county law libraries and many other public libraries in the State. The statutes may also be found

using the Internet at www.revisor.leg.state.mn.us/stats/. The rules may be found at www.revisor.leg.state.mn.us/arule/.

It is not necessary that a person have an attorney in order to participate in this case. They may, however, choose to be represented by legal counsel or any other representative of their choice.

Unless the Administrative Law Judge decides differently, the only participants in the prehearing conference telephone call will be Deputy Burke and Mr. Finke. If a hearing is necessary, they will be the only two "parties". Any other person who desires to become a party to this case must submit a timely petition to intervene pursuant to Minn. R. 1400.8570. This petition must show how that person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought, and shall indicate petitioner's statutory right to intervene if one should exist. If the petition is granted, and the petitioner is given full party privileges, then the petitioner will have the right to present evidence and witnesses, and will also have the right to question witnesses presented by the other parties. Even without filing a petition to intervene, any person may offer testimony or other evidence which is relevant to the case, but they are subject to being questioned by the parties. Generally, non-parties are not allowed to question witnesses provided by the parties.

If a hearing is held, the Administrative Law Judge and the Commissioner can base their decision only on factual information or evidence that is part of the hearing record. Persons participating in the hearing should have available all documents, records, witnesses and any other evidence they need to present their position. Subpoenas may be available to compel the attendance of witnesses or other production of documents. See Minn. R. 1400.8601 for the procedures regarding subpoenas.

If a Hearing is held, once it is completed the Administrative Law Judge will issue a recommended decision. A copy will be sent to each party and to the Commissioner. After allowing at least five days to pass, the Commissioner will issue a final order. During the five-day period, the parties may file comments with the Commissioner regarding the recommended decision.

Failure to participate in the prehearing conference telephone call or failure to appear at the hearing will result in the citation being upheld and the fine will have to be paid within thirty (30) days of the issuance of the Commissioner's final decision, with no further opportunities for administrative appeal.

It is likely that an appeal hearing will cost the taxpayers more than the amount of the fine imposed by the citation. Appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the law. The statute (section 116.072, subd. 6(d)) provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to Staff Attorney Amber Lee at (651) 361-7846 or Pat Holt, Policy/Legal Analyst, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, telephone (651) 296-4883.

Dated: March 19, 2008

s/Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge